

ROY L. PARRISH

IBLA 88-608

Decided May 22, 1990

Appeal from a decision of the District Manager, Las Vegas District, Nevada, Bureau of Land Management, cancelling communications site right-of-way N-39006.

Affirmed.

1. Appraisals--Communication Sites--Federal Land Policy and Management Act of 1976: Rights-of-Way--Rights-of-Way: Appraisals--Rights-of-Way: Cancellation

BLM properly cancels a communications site right-of-way where the holder fails to pay the annual rental charges for the first and second years of the grant following several 30-day notifications by BLM of the fair market rental amount due for those years, as determined by appraisal.

APPEARANCES: Roy L. Parrish, Las Vegas, Nevada, pro se.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Roy L. Parrish has appealed from a July 22, 1988, decision of the District Manager (DM), Las Vegas, Nevada, District Office, Bureau of Land Management (BLM), cancelling communications site right-of-way (ROW) N-39006 for failure to pay rental.

ROW N-39006 for a communications site and access road on Black Mountain, described as the N $\frac{1}{2}$ SW $\frac{1}{4}$, sec. 15, T. 23. S., R. 62 E., Mount Diablo Meridian, Clark County, Nevada, was granted pursuant to Title V of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1761 (1982), with an effective date of May 20, 1986. The grant states that it was issued without benefit of appraisal in order to accommodate the holder's construction and operating schedules, that upon completion of an appraisal the holder would be billed annual rental commencing from the effective date, and that the grant would be subject to cancellation if the

rental were not paid. The grant also required the holder to submit a non-returnable fee of \$120 to cover costs of monitoring construction, operation, maintenance, and termination of the ROW.

By appraisal approved August 27, 1987, BLM determined the fair market annual rental value of ROW N-39006 to be \$5,300 per year. By letter of January 19, 1988, BLM notified appellant that \$10,600 was due for the 2-year period May 20, 1986, through May 20, 1988, and that such rental was payable within 30 days of receipt of the letter. Meanwhile, by letter dated January 13, 1988, appellant notified BLM that the Federal Communications Commission had cancelled his license; that he had lost his call number; and that he was out of business and would no longer need the communications site. BLM received this letter on January 21, 1988.

By letter dated February 9, 1988, appellant responded to BLM's January 19 billing notice. Appellant stated that he never used or occupied the land; that he had, however, made "\$15,000 in improvements in levelling the property and testing the soil for construction"; but that his funding "never developed." Appellant also inquired whether he had the authority to sublease the site.

On March 28, appellant again wrote BLM, stating that he had not received a response to his February 9 letter and again stating that he had improved, but not occupied the site. Appellant further complained that he had not received a copy of BLM's appraisal; that he intended to sublease the site; and that "BLM shall receive their two full years rental payment." Appellant also stated that he was "rescinding" his January 13 letter to BLM.

On April 7, 1988, the DM issued a decision holding ROW N-39006 for cancellation unless appellant paid the \$10,600 rental within 30 days of receipt of the decision. The DM's decision also reminded appellant of the terms of the grant and of governing regulations. The DM explained that it was not BLM's practice to send appraisals to ROW holders, pointing out that appraisals were public records on file for inspection in BLM's office. He further explained that expenditures by the ROW holder for improvements on public lands "are not deducted from the annual rent nor is the holder reimbursed for them," and that the terms of the grant provided no authority for subleasing by the holder.

In a letter to BLM dated June 7, 1988, appellant stated that he and one Larry DePaulis had been negotiating with a BLM official regarding assumption by DePaulis of the ROW and rental obligation. Appellant also stated that he had spent \$17,625 in improving the site. With his letter, appellant included invoices and cancelled checks showing payments to contractors and engineering companies.

By letter dated June 20, 1988, the DM again allowed appellant 30 days to pay the rental, apparently due to the fact that BLM had no record of appellant having received the April 7, 1988, letter and appellant had no

recollection of having received it. ^{1/} In the July 22, 1988, decision appealed herein, the DM explained that since the required rental had not been received in accordance with BLM's April 7 and June 20 notifications, ROW N-39006 was being cancelled for failure to pay rental.

In his statement of reasons, appellant again refers to negotiations with DePaulis who allegedly was willing to take over the ROW site and pay the rental. Appellant asserts that BLM arbitrarily refused to come to an agreement concerning a transfer of the ROW to DePaulis. Appellant also objects to BLM's refusal to allow him to sublease the site.

[1] Under section 504(g) of FLPMA, 43 U.S.C. § 1764(g) (1982), "[t]he holder of a right-of-way shall pay annually in advance the fair market value thereof as determined by the Secretary * * *." Under section 506, 43 U.S.C. § 1766 (1982), "noncompliance with any * * * condition of the right-of-way, or applicable rule or regulation of the Secretary concerned may be grounds for suspension or termination of the right-of-way if, after due notice to the holder * * * the Secretary concerned determines that any such ground exists and that suspension or termination is justified." The regulation at 43 CFR 2803.1-2(d) authorizes BLM to take action to terminate an ROW grant if a rental charge "is not paid when due, and such default * * * continues for 30 days after notice." Herein, the annual rental charges for the first and second years were due upon execution of the grant on May 20, 1986, and prior to the first anniversary date of the grant, May 20, 1987, respectively. See 43 CFR 2803.1-2(a). However, the actual amount owed was not determined until completion of BLM's appraisal. The DM's January 19, 1987, letter gave appellant the first 30-day notice that rental was due. BLM issued two further 30-day notices, one on April 7, 1988, and the other on June 20, 1988. Thus, BLM completely complied with the "written notice" requirement of 43 CFR 2803.4(d), and under 43 CFR 2803.1-2(d), BLM was authorized to terminate the grant. See D. R. Johnson Lumber Co., 106 IBLA 379, 386 (1989).

Appellant urges, however, that BLM should have been agreeable to other arrangements, including subleasing, thereby allowing him to transfer his obligation to pay rental. The terms of appellant's grant do not allow the subleasing of the site. Although the regulations governing rights-of-way do provide at 43 CFR 2803.6-3 for assignments of ROW's, the assignee is bound by the terms and conditions of the grant to be assigned. Moreover, there is no evidence in the case record that appellant actually filed any assignment of the ROW with BLM. And even if an assignment had been pending, it would not have relieved appellant of his obligation to pay annual rental as required by FLPMA, the terms of the grant, and the regulations.

Finally, neither the grant nor the regulations make any provision for applying as an offset for rental due, improvements the holder may have made to the site. We conclude that BLM properly cancelled ROW N-39006 for nonpayment of annual rental.

^{1/} See June 29, 1988, letter from BLM to Senator Chic Hecht.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Administrative Judge Bruce R. Harris

I concur:

James L. Byrnes
Administrative Judge